

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID J. RAVENER and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-238; Submitted on the Record;
Issued April 6, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits.

On January 27, 1997 appellant, then a 44-year-old letter carrier, was injured in the performance of duty when an elevator he was riding down from the eleventh floor came to an abrupt stop on the fourth floor. The Office accepted the claim for low back strain and neck sprain. He received continuation of pay and received compensation for intermittent periods of disability, including two recurrences of disability on May 5, 1997 and August 8, 1987. Appellant returned to limited duty with restrictions on March 25, 1998. He continues to undergo physical therapy for a back condition.

In a report dated February 26, 1997, Dr. Irving Freidman, a Board-certified neurologist, noted that appellant sustained neck and back injuries when the elevator he was riding on January 27, 1997 "fell" from the eleventh to the fourth floor. He noted physical findings and listed under "impression" that appellant sustained post-traumatic cervical myofascitis spasm and post-traumatic lumbosacral myofascitis spasm. Dr. Freidman prescribed physical therapy and noted that appellant was temporarily totally disabled.

A magnetic resonance imaging (MRI) scan of the cervical spine was performed on February 27, 1997 and revealed left-sided C3-4 and C4-5 foraminal stenosis and ventral spurring at C5-6 and C6-7. An MRI scan of the lumbar spine dated March 3, 1997 revealed an annular bulge at L4-5.

In a report dated June 19, 1997, Dr. Freidman noted that appellant was seen for persistent neck and back pain related to the January 27, 1997 work injury. He diagnosed cervical myofascitis, left-sided C3-4 and C4-5 foraminal stenosis, ventral spurring at C5-6 and C6-7, lumbar myofascitis, lumbar discopathy (annular bulge at L4-5 with flattening of the ventral margin of the sac), status post herniorrhaphy unrelated and depression unrelated. Dr. Freidman

stated that, “[b]ased upon the history given by [appellant] and the objective findings, it may be stated with a reasonable degree of medical certainty that the accident of January 27, 1997 was the competent producing cause of [appellant’s] above noted injuries.” He prescribed physical therapy, but noted that appellant’s prognosis was guarded.

The Office referred appellant, along with a statement of accepted facts and a copy of the case record, to Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon, for a second opinion evaluation as to the nature and extent of appellant’s work-related disability. In a report dated August 3, 1998, he described appellant’s history of injury and recorded symptoms including cervical pain when appellant reached up to box mail in a high mailbox and lower back pain most pronounced after appellant had been sitting for a prolonged period of time. Dr. Orlandi reported normal physical findings with full range of motion in both the cervical and lumbar spine. He noted that an MRI scan of the cervical spine was interpreted as showing preexistent left-sided foraminal stenosis at C3-4 and C5 while an MRI scan of the lumbar spine was interpreted as normal, showing only an annual bulge at L4-5 without nerve root or foraminal impingement. Dr. Orlandi stated that “lumbar disc bulges are normal findings.” According to him, appellant’s cervical and lumbar sprains related to the work injury had resolved with no disability or permanent residual. Dr. Orlandi opined that appellant was at maximum medical improvement and was no longer in need of physical therapy.

On August 20, 1998 the Office issued a notice of proposed termination of appellant’s wage-loss compensation and medical benefits. The Office advised appellant that he had 30 days to submit additional medical evidence as to his continuing disability.¹

In a decision dated September 22, 1998, the Office terminated compensation on the grounds that the weight of the medical evidence was represented by Dr. Orlandi’s opinion, which established that there was no continuing disability or residuals related to appellant’s employment injury.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.²

In the instant case, the Office accepted that appellant sustained work-related injury on January 27, 1997 which resulted in neck and low back strain. Although appellant has been under the care of Dr. Freidman, he has not provided a reasoned medical opinion on causal relationship between appellant’s disability and his work injury. He has never addressed the MRI scan findings of foraminal stenosis in relation to appellant’s work injury nor discussed how

¹ The Board notes that the record contains a CA-2a attending physician’s report prepared by Dr. Jerome B. Margolies which does not pertain to appellant.

² *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

appellant's continuing back complaints pertain to his preexisting degenerative back condition as opposed to residuals of the accepted work injury.

In contrast, the Office second opinion physician, Dr. Orlandi, conducted a thorough examination of appellant on August 3, 1998 which revealed normal physical findings. He explained that appellant had normal MRI scan findings of the lumbar spine but that appellant suffered from a preexisting degenerative back condition of the cervical spine. Dr. Orlandi then prepared a reasoned medical opinion based upon an accurate factual and medical history that appellant's disability related to his work injury had resolved and that appellant required no further physical therapy. The Board finds that his opinion constitutes the weight of rationalized opinion of record with respect to appellant's work injury. He found that appellant has no continuing disability or residuals related to the January 27, 1997 neck and back strain. The Board finds that the Office properly terminated appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated September 22, 1998 is hereby affirmed.

Dated, Washington, D.C.
April 6, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member